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*Date:* April 27, 2015

*To:* Board of Supervisors

*From:* Sharon L. Anderson, County Counsel  
By: Linda Wilcox, Deputy County Counsel



*Re:* **LEGAL RESTRICTIONS ON THE USE OF COUNTY SERVICE AREA P-6 ZONE  
SPECIAL TAX REVENUE**

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**SUMMARY**

This office has been asked to provide a brief analysis of the legal restrictions on the use of special tax revenues generated in County Service Area (CSA) P-6 zones. In general, special tax revenues collected from a zone of CSA P-6 are to be used to fund extended police protection services to residents and property owners in the zone. Extended services include either an increased level of a service or a service not offered to the same extent countywide. This memorandum addresses how the special tax revenue may be spent in accordance with the applicable legal restrictions, and provides a method of analyzing proposed expenditures of the special tax revenue.

**BACKGROUND**

In 1983, the Board of Supervisors initiated the formation of a CSA P-6, encompassing the entire unincorporated area, except for the area within the boundaries of the Kensington Community Services District.<sup>1</sup> The formation of the county service area was initiated by filing an application with the Contra Costa Local Agency Formation Commission (LAFCO).<sup>2</sup> The application, and a subsequent resolution declaring the Board's intent to form the county service area<sup>3</sup>, describe the services proposed to be provided within the county service area as "extended police protection services." LAFCO approved the application with conditions. The Board then adopted Resolution No. 83/911, ordering the formation of CSA P-6. Resolution No.

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<sup>1</sup> Before the formation of CSA P-6, the County formed two other county service areas for the purpose of providing extended police protection services, CSA P-2 (formed in 1969), located in the Danville-Alamo area, and CSA P-5 (formed in 1972), located in the Round Hill area. CSA P-2 has two zones, A (located in the Blackhawk area) and B (located in the Alamo area). Both CSA P-2 and CSA P-5 are located within the boundaries of CSA P-6. None of the zones of CSA P-6 overlap any portion of CSA P-5; however, this office is informed that approximately 16 CSA P-6 zones overlap CSA P-2, Zone B. The parcels in those CSA P-6 zones are subject to CSA P-6 zone special taxes as well as CSA P-2B zone special taxes.

<sup>2</sup> Board of Supervisors Resolution No. 83/687.

<sup>3</sup> Board of Supervisors Resolution No. 83/835.

83/911 states that the “type of extended county services to be performed within County Service Area P-6 is extended police protection services.”

The County began forming zones of CSA P-6 in 1989 as part of the subdivision approval process. We are advised that there are now 115 zones of CSA P-6. The formation of most of the existing zones occurred prior to 2009, under a now-repealed version of the CSA Law.<sup>4</sup> However, these zones remain in existence under the current CSA Law.<sup>5</sup>

Since 1992, Board policy has been to impose a condition of approval on all major subdivisions (i.e., subdivisions creating five or more parcels) that requires approval of a parcel tax for police protection in each zone. Most of these zone taxes were approved under the former CSA Law<sup>6</sup> and, like the zones, the taxes remain valid under the current CSA Law.<sup>7</sup> We are informed that, collectively, the CSA P-6 zones generate approximately \$1.6 million in special tax revenue per year. The County Administrator’s Office advises that the cumulative CSA P-6 zone special tax balance was approximately \$6.8 million at the end of 2014.<sup>8</sup>

Our discussion follows.

## **DISCUSSION**

### **A. THE PURPOSE OF A CSA P-6 ZONE SPECIAL TAX IS TO FUND EXTENDED POLICE PROTECTION SERVICES WITHIN THE ZONE**

#### **1. The Authorizing Statutes and Board Resolutions Restrict the Use of the Special Tax Revenues**

CSA P-6 zone special taxes are imposed under the authority of two different laws: The CSA Law and Government Code section 53978. The CSA Law authorizes the levy of special taxes in zones to pay for any authorized service, level of service or authorized facility that

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<sup>4</sup> See former Gov. Code, §§ 25210.8, 25210.6a (repealed by Stats. 2008, c. 158 (S.B. 1458).)

<sup>5</sup> Gov. Code, § 25210.3, subd. (c).

<sup>6</sup> See former Gov. Code, § 25210.6a.

<sup>7</sup> Gov. Code, § 25210.3, subd. (d).

<sup>8</sup> CSA P-6 also receives a portion of the 1% ad valorem property taxes paid by property owners within the boundaries of CSA P-6, the portion varying based on the Tax Rate Areas in which the parcels are located. We are advised that in Fiscal Year 2013-2014, CSA P-6 received \$4.9 million of ad valorem tax revenues. This memorandum does not address the expenditure of these revenues.

may be provided in the county service area.<sup>9</sup> Government Code section 53978 authorizes the levy of special taxes in zones to support police or fire protection services.

A third law is also relevant to the use of zone revenues. Government Code section 53724 is one of the laws approved by the voters in 1986 as Proposition 62 to establish new requirements for the adoption of new or higher taxes by local agencies. Subdivision (e) of Section 53724 requires that revenues raised from a special tax be used “only for the purpose or service for which it was imposed, and for no other purpose whatsoever.” Before 2009, the purpose of a CSA P-6 zone special tax was expressed in each Board resolution that created the zone and called for an election to approve the special tax. Over the years, the Board adopted many of these resolutions, nearly identical to each other. An early example was Resolution No. 92/581, the first paragraph of which states:

“The Board recognizes the need for *increased police protection services in the above subject zone* and the difficulty of funding the current or an increased level of services by revenues now available. Government Code Sections 50077 and 53978 establish procedures for voter authorization of a special tax in order to provide additional funding for police protection.” [Emphasis added.]

This resolution reflected the requirements of the former CSA Law and Government Code section 53978. Former Government Code section 25210.8 (part of the former CSA Law) authorized the establishment of zones with tax rates, assessments and other charges “varying with the extent of benefit to each zone derived from services provided to the property in each zone. . . .” Government Code section 53978, subdivision (b), provides that the special taxes are to be levied for the purpose of paying for specified police protection services and facilities “in such area, zone or local agency to which . . . police protection services . . . are made available.”

The process for forming a zone changed in 2009. Now, two resolutions are used. One resolution creates the new zone, subject to voter approval of the special tax. A second resolution is adopted to call for an election to approve the zone special taxes. This second resolution is substantially similar to each resolution that was adopted under the former CSA Law. A recent example of the second type of resolution is Resolution No. 2013/233, which states in the first paragraph:

“WHEREAS, this Board recognizes the need for *increased police protection services in the above subject zone* and the difficulty of funding the current or an increased level of services. Government Code sections 50077 and 53978 establish procedures for voter authorization of a special tax in order to provide additional funding for police protection.” [Emphasis added.]

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<sup>9</sup> Gov. Code, §§ 25215.2 and 25217.4, subds. (a) & (b).

This resolution reflects the requirements of Government Code section 53978, cited above, and the current CSA Law, which contains the following statutory guidance in Government Code section 25217.4, subdivision (c):

“Any special taxes . . . which are intended solely for the support of services or facilities within a zone, shall be levied, assessed, and charged within the boundaries of the zone.”

The foregoing analysis supports the conclusion that special tax revenues from a CSA P-6 zone are to be used to fund extended police protection services that are provided to residents and property owners in that zone.

## **2. “Extended Police Protection Services” and Other Authorized Expenditures**

As noted above, CSA P-6 was created for the purpose of providing “extended police protection services” within the unincorporated area.<sup>10</sup> Each resolution that the Board of Supervisors adopts for a zone authorizes a special tax to fund the extended police protection services in that zone. “Extended services” is a term used in the former CSA Law but the term was not defined in that law and does not appear in the current CSA Law. The term is defined in case law, and generally refers to both (1) a level of service that exceeds the basic level of service provided countywide; and (2) services that are not provided to the same extent countywide.<sup>11</sup>

Under Government Code section 53978, a special tax for police protection services may be used for (1) obtaining, furnishing, operating and maintaining police protection equipment or apparatus; (2) paying salaries and benefits to police protection personnel; and (3) for such other necessary police protection expenses of the local agency. However, the phrase “other necessary police protection services” does not include funding general operations. Similar to the CSA Law restrictions, the language of Section 53978 has been interpreted to mean a tax “above and beyond the money needed for the general operating expenses” of the police department.<sup>12</sup>

Accordingly, under the law and under the Board’s CSA P-6 zone formation and special tax approval documents, revenues from special taxes collected from a zone of CSA P-6 are to be used to pay for a higher level or different kind of police protection services in the zone.

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<sup>10</sup> In approving the Board’s 1983 application to form CSA P-6, LAFCO approved the services to be performed in that area, namely “extended police protection services.” Determinations made by local agency formation commissions with respect to a county service area prior to January 1, 2009, remain in full force and effect under the new CSA Law.

<sup>11</sup> *City of Santa Barbara v. County of Santa Barbara* (1979) 94 Cal.App.3d 277, 286.

<sup>12</sup> *Fenton v. City of Delano* (1984) 162 Cal. App.3d 400, 409.

But the revenue may not be used to pay for the basic level of police protection services countywide or for general operating expenses of the Sheriff's Office.

**B. AN ANALYTICAL TOOL TO ASSIST IN ADMINISTERING ZONE SPECIAL TAX REVENUES**

The requirement to use CSA P-6 zone special tax revenues to provide extended police protection services in the zones generating the tax revenue has created challenges in the administration of the revenues from zone special taxes. For this reason, much of the revenue, collected over many years, has not been spent.

One method of addressing this challenge might be to consider proposed revenue expenditures as potentially falling into one of three categories: (1) Clearly authorized; (2) clearly prohibited; and (3) requires analysis.

The "clearly authorized" category could include using the revenues from one zone to fund an extra deputy for that zone. The "clearly prohibited" category would include using zone special tax revenues to supplement funding for basic law enforcement services that are offered countywide, operation of the jail and other general administrative expenses of the Sheriff's Office.

Certain proposed expenditures might fall into the "requires analysis" category. The following analytical tool consists of a series of questions that may be used to evaluate a proposed expenditure of CSA P-6 zone special tax revenues. As to the first three questions, if the answer is "no" at any point, it means that the proposal is not consistent with the legal restrictions on the use of these special tax revenues. Questions 4 and 5 are intended to focus the analysis on issues that might arise if an approved expenditure were challenged.

1. Is the service a police protection service? If yes, proceed to question 2. If no, CSA P-6 zone special tax revenues may not be used to fund the service.
2. Is the service an extended service (i.e., an increased level of a service offered countywide, or a service that is not provided to the same extent countywide)? If yes, proceed to question 3. If no, CSA P-6 zone special tax revenues may not be used to fund the service.
3. If the service is to be funded by CSA P-6 special tax revenues generated by a zone, will the service be provided in that zone? If yes, proceed to question 4. If no, CSA P-6 zone special tax revenues may not be used to fund the service.
4. Will the service be provided in only one zone? If yes, CSA P-6 zone special tax revenues may be used to fund the service. If no, proceed to question 5.

5. If the service will be provided in two or more zones, or in a zone and in non-zone areas, can it be shown that the special tax generated in a zone is used to pay for that zone's share of the shared service, and that some other source of revenue is used to fund the service outside the zone? If yes, the use of zone special tax revenues to pay for the service should be defensible.

LW/

cc: Sheriff David O. Livingston

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